

12786

RECORDATION NO. Filed 1425

JAN 21 1981-2 30 PM

INTERSTATE COMMERCE COMMISSION

P. E. MYERS & ASSOCIATES

Practice Before The Interstate Commerce Commission

SUITE 348, PENNSYLVANIA BUILDING

PENNSYLVANIA AVENUE AT THIRTEENTH STREET N. W.

WASHINGTON, D. C. 20004

(202) 737-2188

January 21, 1981

RECORDATION NO.

12786-B

JAN 21 1981-2 30 PM

INTERSTATE COMMERCE COMMISSION

Registered Practitioners

PAULINE E. MYERS

MARK D. RUSSELL

RECORDATION NO. Filed 1425

12786-A

JAN 21 1981-2 30 PM

INTERSTATE COMMERCE COMMISSION

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

No.

JAN 21 1981

Date

File \$

150.80
ICC Washington, D. C.

Attention: Recordation Office

In Re: Lease Agreement
Chattel Mortgage & Security Agreement
Assignment of Rents

Dear Mrs. Mergenovich:

Attached hereto for recordation is an original and duplicate copy of the above.

1. Lease Agreement Between

GWI Leasing Corporation, 71 Lewis Street, Greenwich, CT 06830; and Genesee & Wyoming Railroad Company, 3846 Retsof Road, Retsof, NY 14539.

2. Chattel Mortgage And Security Agreement From

GWI Leasing Corporation, 71 Lewis Street, Greenwich, CT 06830; to Key Bank N.A., 60 State Street, Albany, NY.

3. Assignment of Rents From

GWI Leasing Corporation, 71 Lewis Street, Greenwich, CT 06830; to Key Bank N.A., 60 State Street, Albany, NY.

A check No. S8146 in the amount of \$150.00, payable to the Interstate Commerce Commission, is hereby enclosed to cover the filing fee. Your cooperation in this matter is greatly appreciated.

Yours very truly,

Pauline E. Myers
Pauline E. Myers

PEM/slt

Enclosures

RECEIVED
JAN 21 2 25 PM '81
FEE OPER 100N BR

Counters - Pauline E. Myers

RECORDATION NO. 127865

FILED 1981

AND
SECURITY AGREEMENT

JAN 21 1981-2 30 PM

INTERSTATE COMMERCE COMMISSION

January 19, 1981

GWI LEASING CORPORATION, a Delaware Corporation with its principal office and place of business at 71 Lewis Street, Greenwich, Connecticut
(BORROWER'S)

xxxxxx Security Agreement xxxxxxxx
xxxxxx Security Agreement xxxxxxxx

mortgages and

(hereinafter called "Borrower") hereby grants to Key Bank N.A., a National Banking Association with its principal office at 60 State Street in the City and County of Albany, State of New York (hereinafter called the "Bank") a security interest in the following property, to wit: all and sundry, including additions and improvements, and all accessories, equipment, parts and appurtenances pertaining to or attached to the said railroad cars, including all additions thereto which are now or shall hereinafter be incorporated therein, together with all the rents, issues, income, profits and avails therefrom, all of which railroad cars, rights and interests herein transferred, conveyed, mortgaged, and pledged, or intended to be so, are hereinafter referred to as the "Collateral". Subject, however, to all the right, title and interest of Genesee and Wyoming Railroad Company (hereinafter called the "Lessee"), in and with respect to said railroad cars arising under that certain Lease Agreement, dated as of Nov. 30, 1980, between Borrower, as Lessor, and Genesee and Wyoming Railroad Company, as Lessee (the "Lease").

To have and to hold the above granted and described property unto said Bank, its successors and assigns forever.

This Chattel Mortgage and Security Agreement is made and given to secure payment of monies loaned to Borrower by Bank in the amount of \$1,500,000.00 evidenced by Borrower's Promissory Note of even date herewith and any and all extensions or renewals thereof (hereinafter called "Obligations").

This Chattel Mortgage and Security Agreement is given and intended as a collateral and continuing security for the payment of all of Borrower's Obligations to the Bank*, whether such Obligations shall at any time or from time to time have been reduced or paid in full and thereafter increased or reincurred, and no renewal of, or extension of time of payment of such Obligations or any part thereof, and no agreement not to sue or release or discharge of any persons liable therefor or thereon, or the release or exchange of other collateral or any act or thing whatsoever, save payment in full of the Promissory Note, shall diminish, discharge, impair, or affect this Chattel Mortgage and Security Agreement or the lien thereof or the security afforded thereby.

*pursuant to the Borrower's Promissory Note of even date herewith.

xxxxxx Security Agreement xxxxxxxx
xxxxxx Security Agreement xxxxxxxx

The Borrower warrants, covenants and agrees:

and the Lease,

1. Except for the security interest granted hereby, the Borrower is the owner of the Collateral free from any liens, security interest, encumbrance or other right, title or interest of any other person, firm or corporation, and Borrower will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

2. The Collateral is bought or used primarily for (check one):

- ☐ Personal, family or household purposes, and the Borrower's residence is that shown at the beginning of this agreement unless a different residence is shown in the following space:
- ☐ Farming operations, and the Borrower's residence is that shown at the beginning of this agreement unless a different residence is shown in the following space:
- ☒ Business use, and the Borrower's chief place of business is that shown at the beginning of this agreement unless a different address is shown in the following space:

~~The undersigned hereby certifies that it~~
The undersigned hereby certifies that it has no knowledge of any person or firm who has been convicted of a crime involving the Bank
~~for which such person or firm is liable.~~

3. ~~XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX~~ The Borrower is acquiring ownership of the Collateral from the proceeds of the loan evidenced hereby and by the Borrower's promissory Note referred to, and Bank has been and is authorized to disburse the proceeds of the loan directly to, or the Borrower will remit such proceeds directly to, the seller of the Collateral.

4. ~~THE COUNTERPARTS TO THIS AGREEMENT WILL BE KEPT AT THE ADDRESS SHOWN AT THE BEGINNING OF THIS AGREEMENT UNLESS A DIFFERENT~~

address is shown in the following space: _____,
and Boxowner will promptly notify Bank of any change in the address of the Collateral XXXXX and State XXXX.
Boxowner will not remove the Collateral from said State without the prior written consent of Bank.

5. The Collateral is or is to be attached to, installed in or located on real estate in such manner as to become

Figure 1: A description of the real axes for $\mathbf{N} \times \mathbf{N}$ \mathbf{X}

[illegible]

6. If certificates of title are issued, required to be issued or are outstanding with respect to any of the Collateral Borrower will cause the interest of the Bank to be properly noted upon such certificates and will furnish the Bank with proof thereof.

7. Borrower will not offer to sell, sell, lease or otherwise transfer the Collateral or any interest therein or place the Collateral in the custody, control or possession of any other person without the prior written consent of Bank, except as otherwise provided herein, provided however the foregoing notwithstanding, Borrower may lease the Collateral and*

8. Borrower will have and maintain insurance at all times with respect to all Collateral as provided in paragraph 3.01(c) of the Promissory Note.

[illegible]

Except as otherwise provided herein,

XX Borrower will keep the Collateral free from any adverse lien, security interest or encumbrance and in good order and repair, will not waste or destroy the Collateral or any part thereof, and will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation or upon this agreement or upon any note or notes evidencing the Obligations. Borrower will not use the Collateral in violation of any statute or ordinance; and Bank may examine and inspect the Collateral at ~~any time~~ reasonable times and places, wherever located, and at Bank's request Borrower will disclose the exact location of the Collateral.

10. No Financing Statement or Security Agreement covering the Collateral or any proceeds thereof (except in respect to the security interest provided for herein) is on file in any public office and at the request of Bank, Borrower will join with Bank in executing one or more Financing Statements pursuant to the Uniform Commercial Code in form satisfactory to Bank and will pay the cost of filing the same or filing or recording this agreement in all public offices wherever filing or recording is deemed by Bank to be necessary or desirable. In the event for any reason the law of any other jurisdiction than New York State becomes or is applicable to the Collateral or any transfer into assignment or use agreements with respect to the collateral for periods up to twelve months without the consent of the Bank.

part thereof, the Borrower agrees to execute and deliver all such instruments and to do all such other things as Bank may deem necessary or appropriate to preserve, protect and enforce the security interest of Bank under the law of such other jurisdiction.

11. Borrower shall be in default under this agreement upon the happening of any event of default as defined in Paragraph 4 of the Promissory Note.

[illegible]

4 of the Promissory Note

12. Upon the occurrence of any of the events of default set forth in Paragraph 11 hereof, Bank may declare all Obligations secured hereby immediately due and payable, and shall have the rights and remedies of a secured party under the Uniform Commercial Code of the State of New York (regardless of whether such Code or a law similar thereto has been enacted in the jurisdiction where the rights or remedies are asserted), including, without limitation, the right in the Bank to take possession of the Collateral, without legal process and for that purpose the Bank may enter any premises where the Collateral may be found without legal process, and Bank may sell the Collateral at public or private sale. Bank may require Borrower at Borrower's expense to assemble the Collateral and make it available to Bank at a place to be designated by Bank which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Bank will give Borrower reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Such requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Borrower shown at the beginning of this agreement at least ten days before the time of the sale or disposition. The Borrower shall be and remain liable for any deficiency remaining after applying the proceeds of disposition of the Collateral first to the reasonable expenses of retaking, holding, preparing for sale, selling, leasing, and the like, including reasonable attorney's fees and legal expenses incurred by Bank in connection therewith, or in exercising any of its rights or remedies hereunder (which Borrower agrees to pay), and then to the satisfaction of the Obligations secured hereunder.

13. If the Borrower is in default under Paragraph 4 of the Promissory Note, at its option, Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on, and for the maintenance and preservation of the Collateral, and Borrower agrees to reimburse Bank on demand for any payment made, or any expense incurred thereby. Until default Borrower may have possession of the Collateral and use it in any lawful manner pursuant to and not inconsistent with this agreement and not inconsistent with any policy of insurance thereon.

14. No warranties, express or implied, and no representations, promises or statements have been made by Bank unless endorsed hereon in writing. Any provision of this agreement prohibited by the law of any state shall, as to said state, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof. This agreement has been accepted in New York State and all rights, duties and obligations hereunder, including matters of construction, validity and performance shall be governed by the laws of the State of New York. All terms used herein which are defined in the Uniform Commercial Code of the State of New York shall have the same meaning herein as in the Code. The rights of Bank specified in this agreement shall be in addition to, and not in limitation of, Bank's rights under the Code, as amended from time to time, or any other statute or rules of law conferring rights similar to those conferred by the Code, or of Bank's rights under any other agreement, note or instrument signed by Borrower.

15. Borrower hereby authorizes Bank to file Financing Statements without the signature of Borrower. No waiver by Bank of any default shall operate as a waiver of any other default or of the same default on a future occasion. All rights of Bank hereunder shall inure to the benefit of its successors and assigns; and all duties and obligations of Borrower shall bind his heirs, executors or administrators or his or its successors or assigns. If there be more than one Borrower, their duties and obligations hereunder shall be joint and several. This agreement shall become effective when it is signed by Borrower and need not be executed by Bank. If at any time the same is executed by Bank, it shall be for the sole purpose of filing the same as a security agreement under the Uniform Commercial Code of any jurisdiction if the execution hereof by Bank is required for such purpose.

Signed and delivered on the day and year first above written.

GWI LEASING CORPORATION

(CORPORATE SEAL)

By:

EDWARD J. STEWART, III
President

(BORROWER)

Resident
(TITLE)

(TITLE)

SCHEDULE "A"
to
Chattel Mortgage and Security Agreement
from
GWI LEASING CORPORATION
to
KEY BANK N.A.

IDENTIFICATION OF CARS

The cars referred to in the attached Chattel Mortgage and Security Agreement
are as follows:

<u>NO. OF CARS</u>	<u>DESCRIPTION</u>	<u>SERIAL NUMBER and REPORTING MARKS</u>
50	100 Ton 4750 CFC Covered Hopper Cars	MILW 102200 - 102249, inclusive

CORPORATE ACKNOWLEDGEMENT

STATE OF NEW YORK,

COUNTY OF Albany

} ss.:

On this 19th day of January, in the year Nineteen Hundred and Eighty One, before me the subscriber, personally appeared EDWARD J. STEWART, III who being by me duly sworn did depose and say: That he resides in the New Canaan, Conn.; that he is President of GWI LEASING CORPORATION the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

NOTARY PUBLIC

NICHOLAS J. GREISLER

Notary Public, State of New York

Qualified in Albany County

My Commission Expires March 30, 1972

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF NEW YORK,

COUNTY OF

} ss.:

On this _____ day of _____, 19_____, before me, the subscriber personally appeared

to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.